

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3771 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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G S R T C

Versus

PRAFULCHANDRA K UNADKAT

Appearance:

1. Special Civil Application No. 3771 of 1988
MR HARDIK C RAWAL for Petitioner No. 1
MR SN SHELAT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/08/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the Gujarat State Road Transport Corporation has challenged the judgment and award dated 22-9-1987 passed by the Labour Court, Rajkot in Reference

(LCR) No.1328/86 by which the Labour Court set aside the order of dismissal of the respondent Conductor from service and directed the Corporation to reinstate the petitioner on the original post with continuity of service but without backwages. The Labour Court also directed the Corporation to pay the workman the wages for the period from the date of expiry of one month from the date of publication of the award till the date of reinstatement.

2. The respondent was employed as a Conductor in the service of the petitioner-Corporation. The respondent-Conductor was served with a chargesheet in a departmental inquiry that when he was discharging his duties as a Conductor in a bus plying between Savarkundla and Ahmedabad on 21-5-1980, the respondent had collected fare of Rs.9-60 from six passengers travelling from Savarkundla to Bhuva but the respondent had not issued tickets to them and thus the respondent had shown dishonesty in his dealings with the Corporation in as much as he wanted to misappropriate the fare collected without issuing tickets. At the departmental inquiry, the respondent was held guilty of the charges levelled against him but the competent authority imposed penalty of stoppage of one increment with future effect but the reviewing authority issued notice for enhancement of punishment and after giving an opportunity of being heard, the reviewing authority passed the order dated 1-4-1982 dismissing the respondent from services. The respondent thereupon raised an industrial dispute which came to be referred to the Labour Court, Rajkot as Reference (LCR) No.1328/86. By the impugned award, the Tribunal directed the Corporation to reinstate the respondent-workman in service without backwages. The Corporation has, therefore approached this Court.

3. Mr. Hardik C. Raval, learned counsel for the petitioner-Corporation has submitted that the order of dismissal was passed against the respondent on 1-4-1982 but thereafter he raised the industrial dispute only on 24-4-1986. Therefore, there was delay of four years in moving the machinery under the I.D. Act. The Labour Court, therefore, ought not to have entertained the reference on merits. Even on merits, the Labour Court erred in interfering with the order of dismissal. When the Labour Court accepted the case of the Corporation that the respondent was a Conductor in an express bus which had less than the full sitting capacity with only 42 passengers between Savarkundla and Bhuva, and the distance between the two was as short as 10 to 12 kms., the respondent could have issued tickets to the six

passengers in question after having collected fare from them. Hence, the punishment of dismissal could not be said to be disproportionate. Lastly, the Labour Court ought not have given any direction for paying any wages for the period from the date of expiry of one month from the date of publication of the award till the date of reinstatement.

Mr. Raval further submits that while admitting this petition in August, 1988, this Court had granted interim stay against the execution and implementation of the impugned award on condition that the Corporation follows the requirement of section 17 B of the I.D. Act, but in order to see that the Corporation was not required to pay idle wages to the respondent-Corporation, even prior thereto, the Corporation had reinstated the petitioner in service on 1-2-1988 but that fact should not weigh against the Corporation.

4. Though served none appears for the respondent-workman.

5. Having heard the learned counsel for the petitioner-Corporation, it appears to the Court that once the Labour Court held that the respondent-Conductor was guilty of collecting fare and not issuing tickets in spite of having sufficient time at his disposal, the Labour Court ought not to have allowed the respondent-workman to go scot-free merely by observing that denial of backwages for the intervening period would amount to punishment, more particularly, when the Labour Court itself noted the fact that after the reviewing authority passed the order of dismissal on 1-4-1982, the respondent for the first time raised an industrial dispute on 24-4-1986 i.e. after four years. Hence, denial of backwages for the intervening period from 1-4-1982 till the date of award on 22-9-1987 really meant that the respondent was denied backwages only for a period of about 1 year and 5 months. That can hardly be said to be appropriate punishment to a Conductor who was found to have collected fare and not issued tickets in spite of having sufficient time at his disposal. Moreover, the direction given by the Labour Court for giving continuity of service to the respondent after reinstatement would mean that the respondent would continue to earn increments for the intervening period of five years. The Labour Court did not even restore the penalty of stoppage of one increment with future effect which was imposed by the disciplinary authority.

6. Having regard to all these facts, the Court would

have certainly interfered with the impugned award of the Labour court and might have even set aside the entire award, but considering the fact that the period of about 13 years has already elapsed since the date of reinstatement of respondent-workman, the Court considers that it would be just and proper to dispose of this petition with suitable modification of the award of the Labour Court so that the respondent -workman is not required to be thrown out of service, but scales of justice must be properly balanced and therefore, while not disturbing the award of the Labour Court in so far as the direction of reinstatement is concerned, the respondent workman shall be visited with the penalty of stoppage of six increments with future effect i.e. for the period from 1-4-1982 till 31-3-1988. In case the respondent-workman has been given the benefits of pay fixation and pay revision on the basis of the impugned award of the Labour Court, the petitioner-Corporation shall recompute such benefits and if any recovery is required to be made from the respondent on the basis of the aforesaid directions of this Court, the petitioner-Corporation shall give the respondent suitable installments in such a manner that the monthly installment for recovery of the amount does not exceed 20% of the gross salary payable to the respondent-workman. In case the length of respondent's service to the Corporation is not sufficient to take care of the recovery in this manner, the petitioner-Corporation shall be entitled to recover the balance amount from the retiral dues of the respondent-workman.

7. The petition is accordingly allowed in terms of the aforesaid directions and the award of the Labour Court shall stand modified to that extent. Rule is made absolute accordingly.

zgs/-